

Introduced by Senator McGuire

January 22, 2015

~~An act to amend Section 24204 of the Business and Professions Code, relating to alcoholic beverages. An act to add Chapter 1.1 (commencing with Section 7283.60) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to hosting platforms.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 133, as amended, McGuire. ~~Alcoholic beverages: licenses: suspension and revocation. Transient occupancy taxes: hosting platforms: collection.~~

Existing law authorizes a city, county, or city and county to impose taxes within its jurisdiction, as provided, including a transient occupancy tax.

This bill would authorize a city, county, or city and county to elect to allow platforms, as defined, that elect to assume the responsibility of collecting and remitting transient occupancy taxes on behalf of operators, to collect and remit those taxes to that city, county, or city and county, as specified. For cities, counties, and cities and counties that notify the Controller of their election by April 30, 2017, and for platforms that notify the Controller of their election by March 1, 2017, this collection and remittance would begin on July 1, 2017. For platforms and cities, counties, or cities and counties that provide notifications to the Controller after those dates, the collection and remittance would begin at least 6 months after notification, as specified. The bill would authorize a city, county, or city and county to discontinue an election and would make this discontinuance effective at least 6

months after notification to the Controller. The bill would also authorize a platform to discontinue its election, entirely or in part, effective as specified.

This bill, by December 31, 2018, and by December 31 of each year thereafter, would require the Controller to review or audit a platform's collection and remittance of tax revenue pursuant to the above-described provisions, would further require the Controller to submit a final report containing specific information to each city, county, or city and county in which the platform collected and remitted taxes, and would authorize the platform or the city, county, or city and county to appeal findings identified in the report.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

~~Existing law, the Alcoholic Beverage Control Act, regulates the application, issuance, and suspension of alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law requires the Chief of the Bureau of Food and Drug Inspection to notify the Department of Alcoholic Beverage Control of the conviction of any licensee of any violation of the California Pure Foods Act in connection with alcoholic beverages. Existing law requires the department to promptly investigate whether grounds exist for suspension or revocation of the license.~~

~~This bill would instead require the Director of the State Department of Public Health to notify the department of the conviction of any licensee of any violation of the Sherman Food, Drug, and Cosmetic Law in connection with alcoholic beverages.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 1.1 (commencing with Section 7283.60)
- 2 is added to Part 1.7 of Division 2 of the Revenue and Taxation
- 3 Code, to read:

CHAPTER 1.1. VOLUNTARY OCCUPANCY TAX COLLECTION

7283.60. For purposes of this chapter, the following terms have the following meanings:

(a) “Participating platform” means a platform that assumes the responsibility for collecting and remitting to a city, county, or city and county on behalf of an operator in a participating jurisdiction pursuant to this chapter, the amount of transient occupancy tax on a rental transaction that is facilitated by the platform for a unit that is offered for occupancy for tourist or transient use for compensation to the operator within a participating jurisdiction.

(b) “Participating jurisdiction” means a city, county, or city and county that has adopted a resolution that permits a participating platform to collect and remit all transient occupancy tax on rental transactions that are facilitated by the platform for any unit that is offered for occupancy for tourist or transient use for compensation to an operator within its jurisdiction and has notified the Controller pursuant to subdivision (b) of Section 7283.63, and in which a participating platform is collecting and remitting transient occupancy tax on rental transactions that are facilitated by the platform for any unit that is offered for occupancy for tourist or transient use for compensation to an operator within its jurisdiction.

(c) “Operator” means a person offering, through a platform, to make a unit available for tourist or transient use.

(d) “Personally identifiable information” means operator information and identifiable transaction-level records. “Operator information” means a taxpayer’s or operator’s identifying information, including without limitation, the taxpayer’s or operator’s name, the taxpayer’s or operator’s address, and the property address of any unit made available by an operator or occupied by a taxpayer through a participating platform. “Identifiable transaction-level records” means records of individual rental transactions that, when taken together with other information that is publicly accessible, would be reasonably likely, as determined by the Controller, to reveal the identity or business records of an individual operator or taxpayer. There shall be a presumption that individual transaction records in a participating

1 *jurisdiction with fewer than 500 monthly transactions qualify as*
2 *identifiable transaction-level records.*

3 (e) “Platform” means a marketplace that is created for the
4 primary purpose of facilitating the rental of a unit offered for
5 occupancy for tourist or transient use for compensation to the
6 operator of that unit, and the owner of the marketplace derives
7 revenues, including booking fees or advertising revenues, from
8 providing or maintaining that marketplace. “Facilitating” includes,
9 but is not limited to, the act of allowing the operator of the unit to
10 offer or advertise the unit on the Internet Web site provided or
11 maintained by the owner of the platform.

12 (f) “Transient occupancy tax” means a tax on the privilege of
13 occupying a room or rooms, or other living space, in a hotel, inn,
14 tourist home or house, motel, or other lodging unless the occupancy
15 is for a period of more than 30 days.

16 7283.61. On and after July 1, 2017, every participating
17 platform shall collect on behalf of an operator the amount of any
18 transient occupancy tax on every rental transaction that is
19 facilitated by the participating platform for a unit that is offered
20 for occupancy for tourist or transient use for compensation to the
21 operator and is located within a participating jurisdiction. The
22 participating platform shall remit the amount to the participating
23 jurisdiction pursuant to applicable requirements of local
24 ordinances governing the remission, but not the reporting, of the
25 tax.

26 7283.62. On or before March 1, 2017, the Controller shall
27 develop and publicly notice both of the following:

28 (a) Procedures that a platform shall use to notify the Controller
29 if the platform elects to, or discontinues its election to, become a
30 participating platform.

31 (b) Procedures that a city, county, or city and county shall use
32 to notify the Controller if the city, county, or city and county elects
33 to, or discontinues its election to, become a participating
34 jurisdiction.

35 7283.63. (a) On or before March 1, 2017, a platform may
36 elect to become a participating platform by using the procedures
37 developed pursuant to subdivision (a) of Section 7283.62 to notify
38 the Controller of the platform’s election.

39 (b) On or before April 30, 2017, a city, county, or city and
40 county may elect by resolution to become a participating

jurisdiction by using the procedures developed pursuant to subdivision (b) of Section 7283.62 to notify the Controller of the city's, county's, or city and county's election.

(c) An election made pursuant to this section is effective upon receipt by the Controller and until discontinued by the platform or city, county, or city and county pursuant to Section 7283.65, except that a city, county, or city and county's election pursuant to this section shall not be effective as to a participating platform that, on or before June 15, 2017, notifies the Controller that the participating platform will not collect and remit transient occupancy tax in the city, county, or city and county.

(d) The Controller shall publicly identify, by posting on the Controller's Internet Web site, each platform and each city, county, or city and county that has provided a notification to the Controller pursuant to this section as soon as possible upon receipt, but in no event later than May 31, 2017.

7283.64. On or after July 1, 2017, a platform that did not elect to become a participating platform pursuant to Section 7283.63 or had previously elected to discontinue its status as a participating platform may elect or reelect to become a participating platform by using the procedures developed pursuant to subdivision (a) of Section 7283.62 to notify the Controller of the platform's election. An election made pursuant to this section is effective six months after receipt by the Controller or the date specified in the notice, whichever is later, and until discontinued by the platform pursuant to Section 7283.65. The Controller shall publicly identify, by posting on the Controller's Internet Web site, each platform that has provided a notification to the Controller pursuant to this section as soon as possible upon receipt.

7283.65. (a) A participating platform may elect to discontinue its status as a participating platform by using the procedures developed pursuant to subdivision (a) of Section 7283.62 to notify the Controller of the participating platform's election. An election made pursuant to this subdivision is effective on the first day of the month that is six months after the date of the election. A participating platform may notify the Controller that the participating platform will discontinue collecting and remitting transient occupancy tax in any participating jurisdiction that amends or otherwise alters the ordinance, rules, or provisions applicable to transient occupancy tax in the participating

1 jurisdiction upon the effective date of the amendments or
2 alterations.

3 (b) On or before June 30, 2018, or June 30 of any year
4 thereafter, a participating jurisdiction may elect to discontinue its
5 status as a participating jurisdiction, or a city, county, or city and
6 county may elect to become a participating jurisdiction, by using
7 the procedures developed pursuant to subdivision (b) of Section
8 7283.62 to notify the Controller of the participating jurisdiction's
9 or city's, county's, or city and county's election. An election made
10 by June 30 of any year pursuant to this subdivision is effective on
11 January 1 of the following year after the election, except that a
12 city, county, or city and county's election pursuant to this
13 subdivision shall not be effective as to a participating platform
14 that, on or before November 15 of the year in which the election
15 is made, notifies the Controller that the participating platform will
16 not collect and remit transient occupancy tax in the city, county,
17 or city and county.

18 (c) The Controller shall publicly identify, by posting on the
19 Controller's Internet Web site, each platform and each city, county,
20 or city and county that has provided a notification to the Controller
21 pursuant to this section as soon as possible upon receipt.

22 7283.66. (a) By December 31, 2018, and by December 31 of
23 each year thereafter, the Controller shall review or audit a
24 participating platform's collection and remittance of tax revenue
25 pursuant to Section 7283.61 and shall submit a final report to each
26 participating jurisdiction in which the participating platform
27 collected and remitted taxes. The final report shall not disclose
28 any personally identifiable information and shall contain only the
29 following information:

30 (1) A general description of the Controller's review or audit
31 findings.

32 (2) The aggregate amount of taxes collected and remitted to
33 each participating jurisdiction by each participating platform
34 during the period covered by the report.

35 (3) An identification of any errors in the collection and
36 remittance of tax revenues within the participating jurisdiction
37 that were determined as a result of any review or audit in the
38 participating jurisdiction that were not remediated, including by
39 payment of all amounts owing, within 90 days.

1 (4) *The participating platform's response, if any, to errors*
2 *identified by any audit or review in the participating jurisdiction*
3 *that were not remediated, including by payment of all amounts*
4 *owing, within 90 days.*

5 (b) (1) *The Controller shall only request the participating*
6 *platform to submit personally identifiable information as*
7 *reasonably necessary to (i) verify a participating platform's proper*
8 *application of geographic boundaries and (ii) verify proper*
9 *collection and remittance of transient occupancy tax, and shall*
10 *not disclose to a participating jurisdiction, publicly disclose, or*
11 *otherwise make known in any manner whatsoever any personally*
12 *identifiable information obtained from a participating platform*
13 *or other person in the course of conducting an audit or review*
14 *required by this section.*

15 (2) *When requested by a participating jurisdiction, the*
16 *Controller shall permit any duly authorized officer or employee*
17 *of that participating jurisdiction to examine the records of the*
18 *Controller, excluding any personally identifiable information,*
19 *pertaining to any audit or review of collections by a participating*
20 *platform within that participating jurisdiction. Except as otherwise*
21 *provided herein, this paragraph shall not be construed to allow*
22 *any officer or employee of that participating jurisdiction to request*
23 *or examine any records other than records in the Controller's*
24 *possession that were obtained in the course of its review or audit*
25 *of transient occupancy taxes collected by a participating platform*
26 *within that participating jurisdiction.*

27 (c) *A platform or a participating jurisdiction may appeal any*
28 *findings identified in a review or audit report submitted pursuant*
29 *to subdivision (a) by providing a notice of appeal to the*
30 *Controller's General Counsel. The notice of appeal shall be filed*
31 *within 60 days from the date of the final review or audit report*
32 *and shall identify the issues being appealed and the basis and*
33 *reason for the appeal. The Controller's General Counsel shall*
34 *review the issues appealed and may hold an informal appeal*
35 *conference for purposes of taking additional information and shall*
36 *issue a determination within 90 days of receipt of the appeal.*

37 (d) *The Controller may recover the reasonable costs, measured*
38 *by the Controller's standard rate, of an audit or review conducted*
39 *pursuant to subdivision (a) or an appeal conducted pursuant to*

1 *subdivision (c) from the participating platform that was audited*
2 *or reviewed.*

3 *(e) This section shall not apply to cities, counties, or cities and*
4 *counties that are not participating jurisdictions.*

5 7283.67. *This chapter does not limit the existing authority of*
6 *a city, county, or city and county to regulate operators, including*
7 *any local regulation that requires operators to provide information*
8 *concerning transactions conducted in the city, county, or city and*
9 *county, provided that the requirements do not discriminate against*
10 *transactions facilitated through a platform.*

11 7283.68. *A participating platform's collection and remittance*
12 *of transient occupancy tax pursuant to this chapter shall be subject*
13 *to audit or review only by the Controller, pursuant to the*
14 *requirements of Section 7283.66. A participating platform shall*
15 *not be required to comply with audit or review requirements or*
16 *requests regarding the participating platform's collection and*
17 *remittance of transient occupancy tax pursuant to this chapter in*
18 *any participating jurisdiction, or to related requests or*
19 *requirements for personally identifiable information, by any*
20 *participating jurisdiction.*

21 7283.69. *A participating platform that complies with audit or*
22 *review parameters established by the Controller pursuant to*
23 *Section 7283.66 shall not be required to provide personally*
24 *identifiable information to any city, county, or city and county,*
25 *including a participating jurisdiction, except pursuant to an order*
26 *by a court of competent jurisdiction.*

27 7283.70. *This chapter shall not be construed as creating any*
28 *legal duty or requirement for a participating platform to collect*
29 *or remit transient occupancy taxes in a city, county, or city and*
30 *county that is not a participating jurisdiction.*

31 SEC. 2. *The Legislature finds and declares that Section 1 of*
32 *this act, which adds Section 7283.66 to the Revenue and Taxation*
33 *Code, imposes a limitation on the public's right of access to the*
34 *meetings of public bodies or the writings of public officials and*
35 *agencies within the meaning of Section 3 of Article I of the*
36 *California Constitution. Pursuant to that constitutional provision,*
37 *the Legislature makes the following findings to demonstrate the*
38 *interest protected by this limitation and the need for protecting*
39 *that interest:*

1 *People who rent units for tourist or transient use through*
2 *platforms have a reasonable expectation of privacy, as against*
3 *public disclosure, in their rental of those units and in the personally*
4 *identifiable information they provide to platforms in connection*
5 *with those rentals. Limiting the disclosure of that personally*
6 *identifiable information in any records obtained or generated by*
7 *the Controller pertaining to audits or reviews of a platform's*
8 *collection and remittance of transient occupancy taxes furthers*
9 *the purposes of Section 3 of Article I of the California Constitution*
10 *by appropriately balancing the interest in public disclosure with*
11 *the interest in preserving the privacy and confidentiality of that*
12 *personally identifiable information.*

13 ~~SECTION 1. Section 24204 of the Business and Professions~~
14 ~~Code is amended to read:~~

15 ~~24204. The Director of the State Department of Public Health~~
16 ~~shall immediately notify the department of the conviction of any~~
17 ~~licensee of any violation of the Sherman Food, Drug, and Cosmetic~~
18 ~~Law in connection with alcoholic beverages. The department shall~~
19 ~~promptly cause an investigation to be made as to whether grounds~~
20 ~~exist for suspension or revocation of the license of such licensee.~~